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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 1198

316US #17
MAS-MIL

J. R. MASON,
Petitioner,

vs.

ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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In the Supreme Court
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No.

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ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Petitioner J. R. Mason prays that a writ of certiorari issue to review the decision (R. 246) of the Circuit Court of Appeals for the Ninth Circuit made in the above entitled cause on March 21, 1942, which affirmed the final decree of the District Court of the Northern District of California, Northern Division,

rendered against petitioner and others on July 7, 1941 and filed July 9, 1941. (R. 204, 210, 211.)

OPINION BELOW.

Opinion of the Circuit Court of Appeals, ... Fed. (2d) ..... (R. 246.)

JURISDICTION.

The decision of the Circuit Court of Appeals was rendered March 21, 1942. (R. 246.) The mandate was stayed until disposition of the case by this court. (R. 254.) The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code. (28 U. S. C. Sec. 347 (a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of May 24, 1934, c. 345 (48 Stat. 798), 11 U. S. C. 301-303, adding Sections 78-80 to the Bankruptcy Act of 1898; Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U. S. C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Sec. 3 (b). (52 Stat. 940.) Principal California statutes involved are "the California Irrigation District Act", Cal. Stat. 1897, p. 254, as amended; the "California Districts Securities Commission Act", Cal. Stat. 1931, p. 2263, as amended.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding brought by the respondent Anderson-Cottonwood Irrigation District, a California irrigation district, for composition of debts under Chapter IX of the Bankruptcy Act of 1898 as amended. (11 U. S. C. Secs. 401-404.)

The Anderson-Cottonwood Irrigation District, herein referred to as the district, is an instrumentality and arm of the State of California, exercising exclusively governmental functions. It was formed July 14, 1914 under Cal. Stat. 1897, p. 254 as amended, and contains 32,000 acres of land located in Shasta and Tehama Counties, California. (R. 48.)

On January 1, 1916, the district issued its general obligation bonds in the amount of $480,000, due serially from 1937 to 1956, and on July 1, 1917 the second bond issue in the amount of $575,000 due serially from 1938 to 1957 was sold. On July 1, 1920, bond issue number three in the amount of $200,000 due serially from 1925 to 1935 was sold. All issues bear interest coupons at six per cent per annum, payable semi-annually, and no bonds are due or redeemable prior to maturity.

These facts are not disclosed by the record. The petition in bankruptcy (R. 1) does not even state the amount of indebtedness, except inferentially by attaching an exhibit from which it appears that the indebtedness consisted of bonds in the amount of $1,255,000. (R. 7.)

The plan of composition is set forth (R. 36) and alleges that the appellee secured a loan of $339,000

from the Reconstruction Finance Corporation to enable it to compose its indebtedness of $1,211,000 principal plus interest from 1931. (R. 8.)

The cause was first heard as a contested issue before the court and a plan of composition was approved by an interlocutory decree confirming the same on January 15, 1940. (R. 46-60.) Thereafter, appeals were taken to the Ninth Circuit Court of Appeals by petitioner and others, which appeals were dismissed by that court pursuant to a stipulation entered into which provided for such dismissal in the event a writ of certiorari should be denied in the cause of West Coast Life, etc. v. Merced Irrigation District, No. 9242 in that court. (R. 201, 202.) The mandate of the United States Supreme Court denying certiorari in the West Coast Life case was issued January 6, 1941 (R. 203) 311 U. S. 718.

Thereafter, the final decree was entered and filed July 9, 1941 (R. 204) from which this appeal is taken. By this final decree the court found that the plan of composition was fair, equitable and just. The report of the disbursing agent was approved and the decree further provided that all original bonds and all other obligations of appellee affected by the plan of composition, whether surrendered or cancelled or remaining outstanding and by whomsoever held were thereby cancelled, annulled and held for naught, as enforceable obligations, except as provided in the decree, and restraining forever the holders thereof from asserting any claim or demand against the appellee, its officers or property, and further adjudging that all such obli-

gations not presented to the registrar of the court within twelve months should thereafter be forever barred from participating in the plan of composition or the funds held in the registry of the court, and providing that all such obligations of the district affected by the plan of composition are cancelled, annulled and held for naught except as provided in the decree and that the holders are forever restrained from asserting any claim as against the district or its officers or any property situated therein or the owners thereof. (R. 204, 210.)

By proper specification of error and presentation of points on appeal the petitioner sought a reversal of the final decree, principally on the grounds that: 1. The interlocutory decree was permissive only and neither released nor discharged the respondent from its trust duties nor interfered with its borrowing and taxation powers, while the final decree does squarely impinge on the sovereign powers of the State confided to respondent. 2. That the court had exceeded its jurisdiction and statutory authority by placing a limit of 12 months within which bondholders could present their obligations and receive anything pursuant to the plan of composition. 3. That the court exceeded its jurisdiction in that it issued any restraining order of any character whatsoever against the creditors of the debtor. 4. That the decree is totally unsupported by findings or adjudication warranting and determining that the plan of composition was fair and equitable. (R. 223, 224, 225, 236.)

QUESTIONS PRESENTED.

1. When a sovereign state in the lawful exercise of its borrowing power has contracted the economic rent (usufruct) of certain lands under its exclusive jurisdiction, and dedicated them and their usufruct irrevocably and without time limit, or as much of said usufruct as may need to be collected under the taxing power to repay money borrowed, and the State Supreme Court has decided that such dedication constitutes a "public trust" for the "uses and purposes of the act" (one of the purposes of which trust is to fulfill contracts), and whether such borrowing power is exercised by the state directly or through a political subdivision or instrumentality of the state to whom the state has irrevocably confided its inexhaustible power of taxation, does the amended 11 U. S. C. A. 401-404, notwithstanding the explicit prohibition against any "interference" with "political and governmental powers of the petitioner", appearing in subsection (a) of Sec. 403 (c), grant jurisdiction to the federal court to discharge and release respondent here from the duty of annually levying and collecting direct taxes as required under the law of its creator, the State of California?

2. Does a decree which discharges the public debtor in bankruptcy violate the right reserved by the people over the taxing power and violate Art. 13, Sec. 6, Constitution of California, which provides that the power of the state over taxation shall never be surrendered or suspended by a grant of power to which the state shall be a party?

3. May the final decree in a municipal bankruptcy case embody an injunction?

4. Is a final decree erroneous which adjudges the bankruptcy plan fair and equitable when neither the findings of fact, conclusions of law nor interlocutory decree state facts from which the conclusion that the plan is fair and equitable can be drawn?

REASONS FOR GRANTING THE WRIT.

1. We submit this court should determine the question whether a public trust, expressing a fundamental public policy of the State of California, namely, the collection of economic rent, through taxation (California irrigation districts' taxation is upon the basis of the value of land only, excluding improvements, even trees and alfalfa) and the dedication thereof to the repayment of borrowed money can be the object of jurisdiction and control by the bankruptcy court.

2. The Bekins decision, *U. S. v. Bekins,* 304 U. S. 27, does not determine that Chapter IX of the Bankruptcy Act (11 U. S. C. 401-404) is so drafted that it may be operated or applied so as not to interfere with the political or governmental powers of petitioner. The Ashton decision, *Ashton v. Cameron County Water Improvement Dist. No. 1,* 298 U. S. 513, held that the former Chapter IX did impinge on the sovereignty of the state and was therefore unconstitutional. The Bekins decision arose out of a motion to dismiss the petition on the ground that the act was unconstitutional. No case involving an actual controversy under a

final decree has heretofore come to the Supreme Court of the United States. The interlocutory decree in this case is permissive only as to respondent, but the final decree purports to discharge respondent from its debts, to enjoin the creditors from pursuing any claim, and in effect permanently releases the governmental agency from its contractual obligation to levy taxes, other than necessary, pursuant to the contracts surviving the plan of composition. Instead of deciding the question raised the court said "This can hardly be thought interference violative of the act * * *" We submit this court should determine whether such "interference" is constitutional.

3. This court should determine, we submit, whether the courts can by final decree in municipal bankruptcy cases limit the time within which claims may be presented after the entry of the final decree and enjoin bondholders from retaining rights guaranteed under state law and thus effectively retain jurisdiction of the case, despite the absence of provision in the Bankruptcy Act conveying such authority.

4. This court has never, we submit, passed upon the question in a municipal bankruptcy case as to whether the words "fair and equitable" are words of art as is held to be the case in private bankruptcy or whether they are ultimate facts found by the court, and whether a finding that the plan is fair and equitable is sufficient to sustain a decree so adjudicating. It is respectfully represented that the purpose of requiring special findings is to enable the Appellate Court to pass upon the conclusions of law and decree

as a legal matter based upon the findings made without the necessity of examining the entire record, and that a rule as to such matters ought to be laid down. The same lower court has in another case subsequently held that an interlocutory decree with like findings as in this case is not supported by the findings and has remanded the case to the District Court for further proceedings and correction of the findings. (See opinion of C. C. A. 9, April 16, 1942 in *Lorber v. Vista Irrigation District,* No. 9873, ... Fed. (2d) .....)

Wherefore, petitioner prays that a writ of certiorari be issued out of and under the seal of this honorable court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this court for its review and determination a full and complete transcript of the record and of the proceedings of said court in the case numbered and entitled in its dockets as "No. 9951 J. R. Mason, Appellant, v. Anderson-Cottonwood Irrigation District, Appellee", and that the decree of said court be reversed by this court with directions to dismiss the bill, and for such other relief as to this court may seem proper.

Dated, San Francisco, California,
April 24, 1942.

J. R. MASON,
Petitioner.

PETER TUM SUDEN,
GEORGE THOMAS DAVIS,
Counsel for Petitioner.

In the Supreme Court
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United States

OCTOBER TERM, 1941

No.

J. R. MASON,
Petitioner,
vs.
ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

FACTUAL BACKGROUND OF THE CASE.

A statement of the facts surrounding the case is made in the preceding petition.

I.

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE QUESTION OF "INTERFERENCE" WAS FORECLOSED BY THE APPEAL FROM THE INTERLOCUTORY DECREE.

As the first and second questions involve the same propositions of law, they are discussed together under this heading.

The dominating question is presented for the first time, under the amended Chapter IX, as an actual controversy from a final decree rises above a mere question of legality. The decree, by its terms, interferes with political and governmental powers of respondent, raises squarely the proposition of whether we continue a federation of sovereign States, embodying the principles and ideals of local self-government or whether our dual form of government can be centralized. Your petitioner is submitting this petition in the full belief that this honorable court is opposed to any break in the historic doctrine of reciprocal immunity, that would contravene decisions which for so long have clearly marked the boundaries of this fundamental constitutional limitation.

The final decree has released and discharged respondent from its duty to exercise the inexhaustible power of direct taxation, confided by the State, which power is, we respectfully submit, not only political and governmental, but the highest attribute of sovereignty. The decree furthermore provides that the bonds involved in the plan of composition are annulled and will escheat to respondent and become wholly void, after one year.

The bonds involved are in no sense of the word a mortgage. They constitute general obligation municipal bonds, payable from unlimited ad valorem taxes which the law applicable requires to be levied annually against all privately held land (improvements are exempt) until every bond is paid.

They are thus entirely different obligations from special assessment bonds issued in many other States, and which other bonds are payable from assessments usually limited to benefits received by the land holder.

Farwell v. San Jacinto & Pleasant Valley Irrigation District, 49 Cal. App. 167, 192 P. 1034;
Rialto Irrigation Dist. v. Stowell, 246 Fed. 294;
American Securities Co. v. Forward, 220 Cal. 566, 32 P. (2d) 343 (affirmed sub. tit. *Irones v. American Securities Co.,* 294 U.S. 692, 55 S. Ct. 403).

Per contra: Halifax Drainage District v. State, 185 So. 123, 130 (Florida Supreme Court).

The State Supreme Court, six months after the *Bekins* decision, supra, ruled squarely that all lands escheating to respondent for delinquent taxes are lands "owned by the State", dedicated as a "Public Trust", and as such are exempt from all taxation and also from execution, and that respondent has as full and complete right to "hold, use, manage, occupy, possess, sell or lease" land escheating to it, and to "the rents, issues and profits thereof" as any private landlord. In Stat. of California, 1909, p. 1075, it was enacted that no property owned by respondent may be ever sold, unless "no longer necessary to be retained for the uses and purposes" of the Act.

In the first case below, the court held squarely that the repayment of money borrowed is one of the "uses and purposes of the Act". Also see Stats. of

California, 1911, p. 512, subjecting all property of respondent to the "regulation and control of the State".

Provident Land Corp. v. Zumwalt, 12 Cal. (2d) 465, 85 P. (2d) 116;

El Camino Irr. Dist. v. El Camino Land Corp., 12 Cal. (2d) 378, 85 P. (2d) 123;

Moody v. Provident I. D., 12 Cal. (2d) 389, 85 P. (2d) 132;

Glenn Colusa I. D. v. Ohrt, 31 Cal. App. (2d) 619, 88 P. (2d) 763;

Anderson Cottonwood I. D. v. Klukkert, 13 Cal. (2d) 191, 88 P. (2d) 685.

Before these far-reaching decisions, it had been contended that the "sole" security for such bonds was the power of taxation, and that once the landholders quit paying, the bonds were mere pieces of paper. This argument rested upon dicta in the *Mulcahy v. Baldwin,* 216 Cal. 517, 15 P. (2d) 738 case, where the court had said that bondholders "have the right to enforce their demands solely by an annual assessment on the lands in the District. Such is their contract."

We shall undertake to convince the court that this decree constitutes a violation of the explicit prohibition contained in Section 403, subsection (c), which enjoins that the court

> "* * * shall not, by any order or decree, in the proceedings or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; * * *".

In the *Ashton* case (298 U.S. 513), it was declared:

> "The especial purpose of all bankruptcy legislation is to interfere with the relations between the parties concerned—to change, modify or impair the obligation of contracts. * * * Our especial concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted."

In the *U. S. v. Bekins,* 304 U.S. 27 case, it was held:

> "In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection."

In *Nashville, Chicago & St. L. R.R. Co. v. Walters,* 294 U.S. 405, 415, it was declared:

> "A Statute valid as to one set of facts may be invalid as to another," and "* * * a statute valid, when enacted, may become invalid by a change in the conditions to which it is applied."

The decision of the Circuit Court of Appeals disposes of the above question by referring to the decision in the companion case, decided at the same time, *Mason v. Merced Irrigation District,* No. 9955 (see appendix page iii), wherein the court says:

> "If there was any interference of the nature complained of, the interference was effected by the interlocutory decree. It was that decree which declared the plan of composition to be binding on the bondholders and which relieved the district from the necessity of levying taxes to pay the bonds. The final decree determined nothing

except that the district had carried the interlocutory decree into effect."

The final decree was the first judicial act of the District Court that interfered with the taxing powers of the district. The interlocutory decree acted only on the bondholders, it did not by any positive ruling release the district of its obligations. A reading of that interlocutory decree (R. 46-58) will demonstrate that no attempt is made therein to control or in any wise interfere with the district in its "political or governmental powers" or with its "property or revenues * * * necessary to essential governmental purposes". The injunction of the interlocutory decree operated against the holders of the bonds pending the entry of the final decree.

The final decree (R. 204-211) recites, among other things, first, the fact of the filing of the petition for a composition of indebtedness; that the offer or plan of composition was accepted by the required number of holders, that it was fair, equitable and just and did not discriminate unfairly.

It ordered, adjudged and decreed, among other things, "that all such outstanding old obligations of the petitioning district which are not so presented to the registrar within 12 months from the date hereof shall thereafter be forever barred from participating in the plan of composition or in the funds held in the registry of this court"; and further, "that all old bonds and other obligations of the petitioning district affected by the plan of composition approved

in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforcible obligations of the petitioning district except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers or against the property situated therein or the owners thereof".

All of the foregoing is new matter first embodied in the final decree and none of which was referred to in the interlocutory decree. The provisions of the interlocutory decree do not operate upon the respondent district. Until the entry of the final decree the respondent district was not relieved of its obligation to levy taxes to service the bonds of the petitioner.

It will be noted that the Appellate Court did not pass upon the question of interference and seems to concede that whatever interference there may have been cannot now be complained of because of the fact that the interlocutory decree is final.

The statute in question forbids interference by any order or decree of the court whether interlocutory or final, and even conceding for the purpose of argument that there may have been a practical interference by the terms and provisions of the interlocutory decree, the act still permits the petitioner herein to complain of any interference attempted by the final decree. Failure to have complained against any al-

leged interference resulting from the interlocutory decree does not foreclose the petitioner of his right to complain of the final decree.

The final decree serves to relieve the respondent from its duty to annually levy and collect taxes and perform the other political and governmental powers irrevocably confided to it by its creator, the State of California. It will operate to curb the tax rate to be levied through the years to come. This was not effected by the interlocutory decree.

If there is, in fact, an interference with the respondent district as a result of any decree there is a violation of the statute.

On February 2, 1942, this court in the case of *Cloverleaf Butter Co. v. Patterson,* said the following:

> "Our duty to deal with contradictory functions of state and nation on any occasion and particularly when one or the other is challenged by private interests, calls for the utmost effort to avoid conclusions which interfere with the governmental operations of either. Nothing could be more fertile for discord, however, than a failure to define the boundaries of authority."

"The decision below is in direct conflict with that of the Circuit Court of Appeals of the Eighth Circuit in *Spellings v. Dewey,* 122 F. (2d) 652."

In conclusion we submit that there has been an interference with the political and governmental powers of the respondent district; that this was effected by the final decree.

II.

THE COURT ERRED IN ENTERING THE FINAL DECREE DETERMINING THAT THE PLAN WAS FAIR, EQUITABLE AND FOR THE BEST INTERESTS OF CREDITORS.

The findings of fact contained a declaration "said plan is fair, equitable and for the best interests of its creditors". (R. 40.) The interlocutory decree follows the same language. The final decree (R. 204) declares that the plan of composition "is fair, equitable and just". Petitioner respectfully represents that there is nothing whatever in the record to support this adjudication except the decree and findings. All are in the same form. This is a mere conclusion of law, as the words "fair and equitable" are words of art and as findings impart nothing whatsoever. (*Case v. L. A. Lumber Products Co.*, 308 U. S. 106.)

The decree, it would seem, must be based upon findings which would determine all vital issues and include true values of taxable property, values of tax liens and lands owned, and other assets, specifically covering the ultimate facts upon which the composition proposal is based. (*In re Chicago M. St. P. & P. R. Co.*, 124 Fed. (2d) 754.)

The cases on municipal bankruptcy decided by the Ninth Circuit Court of Appeals uniformly hold that public bankruptcy is different from private bankruptcy and that different rules apply. (*Newhouse v. Corcoran*, 114 Fed. (2d) 690.) This point as to the necessity for special findings has been raised several times by parties in the Ninth Circuit Court of Appeals, but this court has never passed upon the ques-

tion directly except by implication in denying petitions for writ of certiorari. The instant case was decided March 21, 1942. On April 16, 1942, the same court decided the case of *Lorber v. Vista Irrigation District,* No. 9873, ... Fed. (2d) ....., and said:

> "Since our decisions in the cited water district cases were handed down, the Supreme Court decided the case of Consolidated Rock Company v. Du Bois, supra, which case would indicate that in order to 'exercise the informed, independent judgment * * * which appraisal of the fairness of a plan of reorganization entails', the trial court should make some finding to support a conclusion that the payments provided for in the plan of composition are all that the District is reasonably able to pay in the circumstances."

There is thus a conflict in the decisions of the lower court, or a reversal of its former position.

The only difference is that in the instant case the appeal is from the final decree.

It has been held that an interlocutory decree is not "final" under this act. (*American United Life Ins. Co. v. Haines City,* 117 Fed. (2d) 574.)

It is respectfully represented that the rule as to special findings ought to be at least as exacting in municipal bankruptcy as it is in private bankruptcy, and that one of the real purposes for requiring special findings is to minimize injustices and enable the Appellate Court to pass upon the judgment and conclusions of law without examining all of the evidence. (*Consolidated Rock Products Co. v. Du Bois,* 312 U. S. 510.)

"The decision below is in direct conflict with that of the Circuit Court of Appeals of the Seventh Circuit in *In re Chicago, M., St. P. & P. R. Co.*, 124 F. (2d) 754."

III.

THE COURT ERRED IN RETAINING JURISDICTION OF THE CAUSE, IN FIXING A TIME LIMIT WITHIN WHICH THE BONDS COULD BE DEPOSITED FOR PAYMENT AND IN ENJOINING THE CREDITORS FROM PURSUING ANY RIGHTS THEY HAD IN THE STATE COURTS OR OTHERWISE.

There is no provision whatever in Sections 401, 402, Title 11, U. S. C., authorizing the court to issue any injunction whatsoever by the final decree. No doubt the court can by any appropriate means control its proceedings, but once the final decree has been entered it would appear that whatever the jurisdiction of the court may have been, it is at an end. Furthermore, the decree is entered in injunctive form and it should comply with Title 28, Section 383, U. S. C. It does not do so. (See *Kersh Lake Drainage District v. Johnson*, 157 S. W. (2d) 39; *Toucey v. N. Y. Life Ins. Co.*, 62 S. Ct. 139; Jud. Code 265 (28 U. S. C. A. 379); *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4, 8, 9.)

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the court below reversed and the proceedings directed to be dismissed.

Dated, San Francisco, California,
April 24, 1942.

Respectfully submitted,
PETER TUM SUDEN,
GEORGE THOMAS DAVIS,
Counsel for Petitioner.

(Appendix Follows.)

Appendix

In the United States Circuit Court of Appeals for the Ninth Circuit

J. R. MASON, Appellant, vs. MERCED IRRIGATION DISTRICT, Appellee.	No. 9955 Mar. 21, 1942

Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

Before: GARRECHT, HANEY, and HEALY, Circuit Judges.

HEALY, Circuit Judge.

This is an appeal from the final decree in a proceeding under Chapter 9 of the Bankruptcy Act (11 USCA §§401-404) relating to the composition of indebtedness of local taxing agencies.

On February 21, 1939, the district court entered an interlocutory decree confirming the plan of composition proposed by the Merced District. There was an appeal by the present appellant and other dissentnig bondholders, resulting in an affirmance, West Coast Life Insurance Company et al. v. Merced Irrigation District, 114 F. 2d 654. Certiorari was denied January 6, 1941. Thereafter the district deposited with the disbursing agent the sums necessary to pay

the holders of outstanding bonds—other than those purchased by the Reconstruction Finance Corporation—on the basis of the approved plan. A final decree and order approving the report and account of the disbursing agent followed. The court found that the necessary sum had been set aside for dissenting bondholders and that all others had surrendered their bonds at the composition rate; and that the district had therefore, in the time and manner prescribed by the interlocutory decree, made available the consideration to be delivered to the bondholders under the approved plan and in full compliance therewith. The district was accordingly discharged from all debts and liabilities dealt with in the plan as previously confirmed.

Appellant does not dispute these findings. The question he now seeks to present is whether "the final decree herein constitutes an interference with the political and governmental powers of the state, and whether or not the sovereign power of the state to borrow money or to annually tax the lands composing irrigation districts dedicated as a public trust" has been subjected to "interference" within the intendment of 11 USCA §403(c). This provides that the court "shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides."

Appellant says that "the question of interference only arose upon the making and entry of the final decree." Appellant is mistaken. If there was any interference of the nature complained of, the interference was effected by the interlocutory decree. It was that decree which declared the plan of composition to be binding on the bondholders and which relieved the district from the necessity of levying taxes to pay the bonds. The final decree determined nothing except that the district had carried the interlocutory decree into effect. Consult 11 USCA §403(f).

Appellant is not now in a position to complain of the interlocutory decree. Even if he were, the points he seeks to argue are without force. West Coast Life Insurance Company v. Merced Irrigation District Company, supra. The nubbin of the interference argument seems to be that the district is discharged of the debts upon its making the money available to the creditors pursuant to the approved plan of composition. But this can hardly be thought interference violative of the Act, for the end and purpose of the Act is to enable the taxing district to compose its debts; and the validity of the legislation as applied to irrigation districts in the state of California is settled. Lindsay-Strathmore Irrigation District v. Bekins, 304 U. S. 27.

Affirmed.

(Endorsed:) Opinion Filed Mar. 21, 1942. Paul P. O'Brien, Clerk.

MAY 26 1942
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No. 1198

J. R. MASON,
Petitioner,

vs.

ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI AND TO BRIEF IN SUPPORT THEREOF.

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RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI AND TO BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Anderson-Cottonwood Irrigation District acknowledges receipt of copies of the petition herein for a writ of certiorari and the brief in support thereof, and in reply thereto will point out some defects in the petition and then show additional reasons why it should be denied.

I. DEFECTS IN THE PETITION.

On pages 3, 4 and 5 of the petition is a "Summary Statement of the Matter Involved". The third paragraph of this statement gives certain facts about the bond issues of the district and states that these facts are not disclosed by the Record, although in the interlocutory decree confirming the district's plan of composition, which decree is set forth in full beginning at page 46 of the Record, full details about the various bond issues of the district are given at page 49 of the Record. There is also given the amount theretofore paid on the bonded indebtedness and the amount of the indebtedness is given as $1,121,000 principal amount of bonds, plus accrued interest thereon maturing on and subsequent to July 1, 1931.

Appeals were taken from this interlocutory decree, which were dismissed by the Circuit Court of Appeals for the Ninth Circuit. The mandate dismissing these appeals is set forth in the Record at pages 201 et seq.

On page 4 of the petition for certiorari is a summary of the final decree which was entered by the District Court July 9, 1941 (R. 204). From this decree the petitioner herein took an appeal, but the Circuit Court of Appeals for the Ninth Circuit affirmed the final decree in a decision which is given on pages 246 and 247 of the Record. As this decision is based largely upon the decision of the same Court on the same day in a case involving the final decree in favor of Merced Irrigation District, the opinion in the Merced case is given in full at pages 248 and 250 of the Record.

At page 5 of the petition for certiorari is a statement that "by proper specification of error and presentation of points on appeal" the Petitioner sought a reversal of the final decree in this case principally on four grounds. The second of these grounds is thus stated:

> "That the court had exceeded its jurisdiction and statutory authority by placing a limit of twelve months within which bondholders could present their obligations and receive anything pursuant to the plan of composition."

In the opinion of the Circuit Court of Appeals at page 247 of the Record is a flat statement that this point was not properly brought before the court. It is shown by the Circuit Court of Appeals that in the District Court Appellant filed a statement of points in which he designated 22 errors proposed to be relied upon upon the appeal (R. 223). Point 14 was stated as follows:

> "The court erred in fixing a period of twelve months within which creditors of the District must present their claims to the Registrar for payment pursuant to the plan of composition, in that such term should not be restricted to the period of twelve months."

The court then said that in the specification of errors in his brief, Appellant failed to mention this point, nor did he touch upon it in any way until the oral argument. The Circuit Court of Appeals then points out that Subdivision 2(b) of Rule 20 of the Rules of that court requires that the brief contain "a specification of errors relied upon" and says:

> "In view of the failure to specify the point or to argue it in the brief, the alleged error will not be considered."

The rule is obviously reasonable and we submit that the Circuit Court of Appeals was perfectly justified in refusing to consider this point.

On pages 6 and 7 of the petition is a statement of "Questions Presented". Only four questions are presented and none of them contains any intimation of any intention to press the point which the Circuit Court of Appeals ignored because it was not properly presented or considered in the brief. However, in the "Reasons for Granting the Writ", set out on pages 7 to 9 of the petition, the Petitioner states as his third reason, on page 8, that this Court should determine whether the courts can, by final decree in such cases as this, "limit the time within which claims may be presented after the entry of the final decree", although he has not included that as one of the "Questions Presented" by the petition.

Furthermore, the brief in support of the petition and printed therewith does not contain any argument in support of this assertion in the petition that the court had no right to fix a time limit within which bonds could be deposited for payment. At page 21 of the brief the third statement of alleged error does say that the Court erred "in fixing a time limit within which the bonds could be deposited and paid", but no authorities are cited and no argument is made in support of that statement. It is therefore uncertain why Petitioner referred to this point at all.

The fourth ground on which Petitioner says that he sought a reversal of the final decree is stated as follows:

> "That the decree is totally unsupported by findings or adjudication warranting and determining that the plan of composition was fair and equitable."

No such ground of reversal was urged by the petitioner either in the assignment of errors filed with the District Court (R. 223 et seq.) or in the "Statement of Points on Which Appellant Intends to Rely on Appeal" (R.236) or in his brief before the Circuit Court of Appeals. The brief contained no discussion as to the inadequacy or lack of findings and the point is not mentioned in the opinion of the Circuit Court of Appeals in either this case or the Merced Irrigation District Case.

The petitioner, by his former attorney, at pages 213 to 215 of the Record proposed a modified form of final decree and supported it with a memorandum which is set forth in full at pages 216 to 219 of the Record. There is nothing either in this proposed final decree or in the memorandum supporting it which intimates any dissatisfaction with any findings.

As a matter of fact, this point is an afterthought *and is raised here for the first time* because of the decision of the Circuit Court of Appeals for the Ninth Circuit in

> *Lorber v. Vista Irrigation District,* No. 9873, decided April 16, 1942,..... Fed. (2d).....

wherein the Circuit Court of Appeals on an appeal from an interlocutory decree confirming the plan of composition of Vista Irrigation District remanded the case to the District Court for further findings.

II. WHY THE PETITION SHOULD BE DENIED.

On pages 7 and 8 of the petition, four alleged reasons are given why it should be granted. The brief accompanying the petition discusses three alleged errors of the Circuit Court of Appeals. The third point of the brief charges actually two separate errors, but Petitioner discusses only one of them.

1. Matters that are res judicata.

The first two of the alleged reasons for granting the petition are treated under one heading in the brief and constitute an attempt to revive the appeal from the interlocutory decree, which was dismissed by the Circuit Court of Appeals. Therefore, the interlocutory decree is now *res judicata* of all the matters adjudicated therein. It confirmed the District's plan of composition and the statute itself made the plan binding on the creditors, on the sole condition that the District should make the consideration provided for in the plan available for them. This was done and the essential part of the final decree is the determination that the consideration had been made available for the creditors. The petitioner states that the case of

United States v. Bekins, 304 U. S. 27, 82 L. Ed. 1137, 58 S. Ct. 811,

arose out of a motion to dismiss the petition on the ground that the act was unconstitutional. The district involved in that case was an irrigation district of exactly the same type as the Anderson-Cottonwood Irrigation District and this court, after thoroughly exploring the applicability of the new law to a California irrigation district, held the statute to be "a valid enactment". The petition herein does not attempt to show that the plan of composition of Anderson-Cottonwood Irrigation District, which was confirmed by the District Court and thus made conditionally binding upon the creditors, was not in strict accordance with the provisions of the statute.

The questions raised in the first two alleged reasons for granting the writ of certiorari might properly have been raised on the appeal from the interlocutory decree. That appeal was dismissed and the interlocutory decree became a conclusive adjudication. The Circuit Court of Appeals determined, in accordance with its opinion in the Merced case (R.249-250), that if there was any interference with governmental functions of the state or property dedicated as a "public trust", that interference was effected by the interlocutory decree, because the final decree determined nothing except that the district had carried the interlocutory decree into effect, and the Court held that appellant was not now in a position to complain of the interlocutory decree.

The final decree, by determining that the district had made available for the creditors the consideration provided for in the plan of composition, put into effect the provision of Subdivision (f) of Section 83

of the Bankruptcy Act (11 U.S.C. Sec. 403), that the plan would become binding on the creditors when the consideration was made available for them. Of course, that released the district from any obligation to the creditors except as provided in the plan.

By some occult reasoning, this is said to be an interference with the power of the district to levy taxes. Of course, it is only a determination that the district is no longer obligated to its creditors except as provided in the plan of composition. If it owes them nothing more than the plan provides, of course, it has no duty to levy taxes beyond its obligation. This is no more an interference with the *power* of taxation than would be effected by a voluntary agreement with its bondholders to pay them thirty cents on the dollar.

Petitioner's brief on page 12 states that the decree, by its terms, interferes with political and governmental powers of Respondent and at page 18 of the brief it is said that the decision below is in direct conflict with that of the Circuit Court of Appeals in

Spellings v. Dewey, 122 Fed. (2d) 652.

That was an appeal from an interlocutory decree confirming a plan of composition of a drainage district. The decree sought to preserve the status of the commissioners of the district, and the Circuit Court of Appeals held that the District Court could not interfere with the right to elect new commissioners or to petition the county court to remove all or any of the commissioners and appoint their successors. This provision of the interlocutory decree in that case was a plain violation of the provision of the statute against

interference with any of the political or governmental powers of the petitioner.

Reading the final decree in this case, we fail to find in any of its terms any such interference. It does not forbid the district to do anything, but in accordance with the statute making the plan of composition binding on the creditors when the consideration provided for in the plan has been made available for them, it cancels and annuls the old bonds and other obligations of the district affected by the plan, except as provided therein, thus making it unnecessary for the district to levy further taxes for the old bondholders, as they are to be paid in cash.

But, as was held by the Circuit Court of Appeals, petitioner is not in a position to complain of this provision in the final decree. The interlocutory decree confirmed the plan of composition, and the statute itself made it conditionally binding upon the creditors. Therefore, any objections to the plan of composition could have been and should have been raised on the appeal from the interlocutory decree, which is expressly provided for by the statute. As the appeal from the interlocutory decree has been dismissed, that decree has now become conclusive. This fact was emphasized in

> *Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371, 84 L. Ed. 329, 60 S. Ct. 317,

in which Mr. Chief Justice Hughes in delivering the opinion of the Court said:

> "The remaining question is simply whether respondents, having failed to raise the question in

> the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that *res judicata* may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, 'but also as respects any other available matter which might have been presented to that end'."

See also Black on Judgments, Second Edition, Sec. 509, where it is said:

> "It is true that, so far as concerns the further prosecution of the same case, an interlocutory judgment for the plaintiff determines every fact alleged in the declaration which, but for such judgment, the plaintiff would have to prove . . . and precludes the parties from introducing any evidence to enlarge, lessen or defeat the right so determined."

In petitioner's brief, page 20, it is said that it has been held in

> *American United Life Insurance Company v. Haines City,* 117 Fed. (2d) 574,

that an interlocutory decree is not "final" under this act, meaning Chapter IX of the Bankruptcy Act. That case was an appeal from an order allowing a modification of a plan of composition after it had been confirmed by interlocutory decree and after the time for an appeal had expired. It was contended that the decree became final after the expiration of ten days after it was entered. The court, however, said:

> "Like other interlocutory judgments, it remains in a measure under the court's control *if not appealed from.*" (Italics ours.)

Of course, if an appeal is taken from the interlocutory decree and dismissed, as in the case at bar, the interlocutory decree becomes a final and conclusive adjudication of the matters adjudged therein.

2. Second point in the brief is res judicata and made here for the first time.

The second point considered in the brief in support of the petition is that the court erred in entering the final decree determining that the plan was fair, equitable and for best interests of creditors.

This was determined by the interlocutory decree and was merely reiterated in the final decree to show the basis for determining that the district had made available for its creditors the consideration provided for in the plan of composition. It is not a part of the matters adjudged but is set forth as a part of a "finding" of certain facts that were determined by the interlocutory decree. There is no requirement in the statute that findings are necessary for the final decree, whose essential purpose is to determine that the petitioner has made available for the creditors the consideration provided for in the plan theretofore confirmed.

Petitioner's brief at page 19 cites

Case v. L. A. Lumber Products Company, 308 U. S. 106, 84 L. Ed. 110, 60 S. Ct. 1,

in support of his statement that the words "fair and equitable" are "words of art and as findings impart nothing whatsoever". No such holding was made in that case. The opinion there states that the words "fair and equitable" as used in Section 77B of the Bankruptcy Act "are words of art which, prior to the advent of Section 77B, had acquired a fixed meaning through judicial interpretations in the field of equity receivership reorganizations". The case was reversed, not because these words as findings imparted nothing whatsoever, but because an exhaustive review of the evidence showed that the plan was not "fair and equitable".

As we have heretofore seen, no complaint was made in the Circuit Court of Appeals, either on the appeal from the interlocutory decree or on the appeal from the final decree, as to the inadequacy of any finding or as to any lack of findings. The point is raised here for the first time because the Ninth Circuit Court of Appeals in

Lorber v. Vista Irrigation District (supra)

on an appeal from an interlocutory decree held that the findings were inadequate.

Petitioner's brief, at page 20, declares that this decision is a reversal of the former position of the Circuit Court of Appeals in affirming several decisions confirming plans of composition of various irrigation districts. However, he does not claim that all these decisions should now be reviewed by this Court. Obviously, under the doctrine of *res judicata,* this Court could not now disturb these decisions. How then

could it disturb the confirmation of Respondent's plan of composition by an interlocutory decree, from which an appeal has been taken and regularly dismissed?

Petitioner's brief at page 21 declares that the decision below is in direct conflict with that of the Circuit Court of Appeals of the Seventh Circuit in the case entitled

In re Chicago, M., St. P. & P. R. Co., 124 Fed. (2d) 754.

This was a complicated case involving the reorganization of a vast railroad company. The opinion is long and determined that the findings were not sufficient. Petitioner does not point out any conflict between that decision and the decision of the Circuit Court of Appeals in this case, but utterly ignores the obvious distinction between a proceeding for the confirmation of a plan of composition of a public taxing agency and a proceeding for the reorganization of a private corporation.

3. Objection to time limit not properly presented.

The third point considered in the brief, at page 21, is that the court erred in retaining jurisdiction of the cause, in fixing a time limit within which the bonds could be deposited for payment, and in enjoining the creditors from pursuing any rights they had in the state courts or otherwise. This really includes two points.

As we have heretofore seen, the Circuit Court of Appeals held that the point about the time limit had not been properly presented to that court and was

therefore not decided. We understand that after such a violation of the rules of the Circuit Court of Appeals the point will not be considered here on a petition for certiorari. Furthermore, this point is not referred to in the petition as one of the "Questions Presented". As we understand Paragraph 2 of Rule 38 of this Court, only the questions specifically presented in the petition will be considered.

No showing is made by the petitioner that the time limit fixed in the final decree is unreasonable or unjust to him and no authority is cited to the effect that the court had no right to fix a limit.

It might also be said that in the opinion in

Chicot County Drainage District v. Baxter State Bank (supra)

the decree of the District Court confirming the drainage district's plan of composition was summarized. It contained a provision for exactly such a time limit for the presentation of old bonds for payment as is fixed in the final decree in this case. That decree was rendered under the old Chapter IX, which was held to be unconstitutional. The statute did not authorize specifically any time limit within which bonds could be presented for payment, but the opinion of this court contained the following:

> "It appears that the proceedings in the District Court to bring about a plan of readjustment were conducted in complete conformity to the statute."

4. Court's right to enjoin.

As to the power of the court to issue injunctive orders, item 15 of Subdivision (a) of Section 2 of the Bankruptcy Act invests courts of bankruptcy with power to "make such orders, issue such process and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this act".

In the Judicial Code also, by Section 373 of Title 28 U. S. C., the courts are given power "to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law". Such an incidental injunctive provision as is contained in paragraph (c) of the final decree to prevent the harassing of the district by the presentation of claims based on the old bonds is certainly "agreeable to the usages and principles of law".

Complaint is made that the decree does not comply with Title 28, Section 383 U. S. C. The same point was made in

Dealtry v. Posse School, Inc., 100 Fed. (2d) 470.

This was a proceeding under Section 77B of the Bankruptcy Act and the Circuit Court of Appeals of the First Circuit held that objections to the validity of an injunction issued in that case were "without merit" because of the general power to enjoin in aid of its jurisdiction given to the court in Section 2 of the Bankruptcy Act. On the point as to the form of the order, the court said:

> "Failure to set forth the reasons for the order does not invalidate it. Lawrence v. St. Louis-S. F. Ry Co., 274 U. S. 588, 589, 47 S. Ct. 720, 71 L. Ed. 1219; Arkansas Railroad Commission v. Chicago, etc., R. Co., 274 U. S. 597, 47 S. Ct. 724, 71 L. Ed. 1224.
>
> "Moreover, the reasons for issuing the injunction in this case, while not formally expressed, were apparent from the papers on file and evidently well understood by all parties."

Paraphrasing the Court's language, the reasons for the injunctive part of the final decree in this case are apparent from the papers on file and are well understood by all the parties, and the provisions in the final decree that the old obligations are "cancelled, annulled and held for naught as enforcible obligations of the petitioning district", except as provided in the decree, constitute a statement of the reasons for the injunctive order, which sets forth specifically the acts that are to be restrained.

In view of the foregoing, we believe the petition herein for a writ of certiorari should be denied.

Dated, Stockton, California,
May 18, 1942.

Respectfully submitted,
A. L. COWELL,
Counsel for Respondent.

L. C. SMITH,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this.....day of May, 1942.

.....

.....

Counsel for Petitioner.